

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JACOB SILVERMAN,

Case No: C 11-1615 SBA

Plaintiff,

## ORDER TO SHOW CAUSE

vs.

THE CITY AND COUNTY OF SAN  
FRANCISCO et. al.,

## Defendants.

On August 23, 2013, the Court granted Defendants' request to modify the dispositive motion deadline and set a briefing schedule governing Defendants' motion for summary judgment. Dkt. 142. Specifically, the Court ordered Defendants to file a motion for summary judgment by no later than twenty-one days from the date of the Order and Plaintiff to file a response no later than fourteen days after the date on which Defendants' motion was filed. Id. In addition, the Court ordered Plaintiff's former counsel, The Law Offices of Geri Lynn Green, LC ("Green") to send Plaintiff the Court's August 23, 2013 Order as well as various other Orders issued by the Court. Id. Green was directed to file a certificate of service with the Court, stating the date, place and manner of service, and the street address of Plaintiff. Id.

The Court also advised Plaintiff that he had failed to comply with Civil Local Rule 3-11, which requires "a party proceeding pro se whose address changes while an action is pending [to] promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address."<sup>1</sup> Dkt. 142. The Court ordered Plaintiff to

<sup>1</sup> In July 2013, Plaintiff advised the Court that he was incarcerated. However, he did not provide the Court with the address of the facility where he is incarcerated.

1 promptly file a Notice of Change of Address with the Court upon his receipt of the August  
 2 23, 2013 Order. Id. Plaintiff was warned that his failure to do so may result in sanctions,  
 3 up to and including dismissal of this action. Id. Finally, Plaintiff was directed to appear in  
 4 this action by other counsel or pro se by no later than thirty days from August 23, 2013. Id.

5 On August 23, 2013, Green filed a proof of service with the Court demonstrating  
 6 that it served Plaintiff with various documents, including the Court's August 23, 2013  
 7 Order, at 855 West Sunset Blvd., Apt. A, Hayward, CA 95451.<sup>2</sup> Dkt. 143. On September  
 8 13, 2013, Defendants' filed a motion for summary judgment. Dkt. 144. As such, Plaintiff's  
 9 response was due by no later than September 27, 2013. To date, Plaintiff has not filed a  
 10 response to Defendants' motion for summary judgment. Nor has Plaintiff filed a Notice of  
 11 Change of Address with the Court or appeared in this action by other counsel or pro se.

12 An action may be dismissed under Rule 41(b) of the Federal Rules of Civil  
 13 Procedure for failure to prosecute or to comply with a Court Order. See Hells Canyon  
 14 Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (recognizing  
 15 that a district court may dismiss an action pursuant to Rule 41(b) *sua sponte* for a plaintiff's  
 16 failure to prosecute or comply with a court order); Ferdik v. Bonzelet, 963 F.2d 1258, 1260  
 17 (9th Cir. 1992) ("the district court may dismiss an action for failure to comply with any  
 18 order of the court"). Here, Plaintiff has failed to comply with the Court's August 23, 2013  
 19 Order and has failed to prosecute his case. As such, the instant action is subject to  
 20 dismissal under Rule 41(b). The Court, however, will afford Plaintiff an opportunity to file  
 21 a memorandum showing cause why this action should not be dismissed under Rule 41(b).

22 Accordingly,

23 IT IS HEREBY ORDERED THAT:

24 1. Plaintiff shall show cause why the instant action should not be dismissed.  
 25 Within ten (10) days from the date this Order is filed, Plaintiff shall file a memorandum not  
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27 2 The proof of service also demonstrates that Green served Plaintiff with various  
 28 documents in May, June, and July 2013 at the San Francisco Hall of Justice, 850 Bryant  
 Street, 7th Floor, San Francisco, California 94103. Dkt. 143.

1 to exceed five (5) pages explaining why this action should not be dismissed under Rule  
2 41(b) for failure to prosecute and failure to comply with a Court Order. The memorandum  
3 shall set forth the reason Plaintiff failed to file a timely response to Defendants' motion for  
4 summary judgment, any basis for opposing summary judgment, and the reason Plaintiff  
5 failed to file a Notice of Change of Address with the Court and appear in this action by  
6 other counsel or pro se as directed by the Court on August 23, 2013. Plaintiff is warned  
7 that the failure to fully comply with this Order will result in dismissal of this action without  
8 further notice.

9       2. Defendants shall notify the Court if Plaintiff fails to timely respond to this  
10 Order.

11           IT IS SO ORDERED.

12 Dated: 12/9/2013

  
SANDRA BROWN ARMSTRONG  
United States District Judge

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